
Commonwealth of Massachusetts

Appeals Court Essex County

**ORIGINAL
WITH PROOF OF
SERVICE**

2015-P-0446

ELLEN DUFF KAREORES,

Plaintiff-Appellee,

vs.

CHRISTOPHER KAREORES,

Defendant-Appellant.

On Appeal from the Judgment in the Essex Probate and Family Court

BRIEF FOR DEFENDANT-APPELLANT

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STATEMENT OF THE ISSUE

DID THE TRIAL COURT ERR WHEN CONSIDERING THE JUDGMENT AS A WHOLE AND IN REGARD TO SPECIFIC PROVISIONS RELATED TO ALIMONY, PROPERTY DIVISION, AND THE PARTIES' PROPORTIONAL SHARE OF THE CHILDREN'S SECONDARY AND COLLEGE EDUCATIONAL EXPENSES?

STATEMENT OF THE CASE

The Essex Probate Court issued a Judgment on November 28, 2014, (R.A. pp. A38-40). This is an appeal of that Judgment (R.A. p. A55).

STATEMENT OF THE FACTS

The parties were married in Haverhill, Massachusetts on December 22, 2012 (R.A. p. A42). Christopher moved out of Ellen's house in early February 2013 (R.A. p. A42) and Wife filed for divorce on June 23, 2013 (R.A. p. A32). The Complaint was served on Husband on July 18, 2013 (R.A. p. A43). The parties were previously married to each other on May 20, 1995 and divorced on March 26, 2004 (R.A. p. A42). The parties have two children together, born during their first marriage: Catherine Jean Kareores (d.o.b: 7/16/97) and Michael Edward Kareores (d.o.b. 2/1/01) (R.A. p. A42).

There was a Separation Agreement and Judgment dated March 26, 2004 which divided their property and

set alimony (R.A. pp. A6-25). Christopher Kareores was ordered to pay \$7,600.00 per month in alimony which he paid until October 2013 after which he paid \$7,000.00 per month until the 2014 Judgment (see R.A. p. E234 for first \$6,000.00 and \$1,000.00 payments in October 2013; see R.A. p. E290 for recent payment spreadsheet).

Within the 2004 Separation Agreement, amongst other things, equity in retirement accounts (R.A. p. A19, para. i) and the marital house (R.A. p. A17-18) were divided. It was agreed that "In the event of the Wife's remarriage, an event that terminates her right to receive alimony payments under paragraph 1 and 2 above, the Husband and Wife will attempt to agree on an appropriate amount that the Husband shall pay monthly, as child support for the support and maintenance of each unemancipated child, as defined in this Exhibit A-Part I, Paragraph 5" (R.A. p. A9, para. 5).

In regard to the parties' previous marriage, and about ten months before the parties' second marriage, a Joint Stipulation for Modification of Alimony Support was filed on February 22, 2012 in 03D-0488-DV1 in which it was stipulated by both parties that "the

Parties are living together, although not as Husband and Wife" (R.A. p. A26). Additionally, there was a Joint Petition which represented to the court that "The Parties are living together but not as Husband and Wife" (R.A. p. A27, para. 2). In support of the Joint Stipulation for Modification of Alimony Support in 03D-0488-DV1, Wife also executed an affidavit (R.A. p. A28) representing to the Court that "Recently, Christopher moved back into the marital home, although we are not living as husband and wife" (R.A. p. A28, para. 5). This affidavit was notarized by her counsel on February 22, 2012 (R.A., p. A29). Christopher also executed an affidavit on February 22, 2012 in support of the Joint Stipulation for Modification of Alimony Support in 03D-0488-DV1 stating "Recently, I was forced to obtain alternate housing and moved back into the marital home, although we are not living as husband and wife. I am residing in the residence as a renter of sorts" (R.A. p. A30, para. #5). Christopher testified that the affidavit was prepared by his wife's attorney (R.A. p. T118:6).

The Court found that "at the time the parties moved in together after the first divorce, in May of 2007, Husband's retirement accounts had a value of

\$266,163.64" (R.A. p. A46, para. 43). Records introduced at trial show that at the time of marriage on December 22, 2012, Husband's 401k was worth \$571,591.23 (R.A. p. E175) as reflected in the December 31, 2012 statement and worth approximately \$591,490.66 in February 2013 at about the time the breakdown occurred when Husband was asked to move out (R.A. p. E177). Additionally, the value of the account on June 30, 2013, at or about the time Plaintiff filed for divorce was \$632,599.75 (R.A. p. E181) as evidenced by the June 30, 2013 statement. The July 31, 2013 statement shows a value of \$656,737.67 which is the nearest statement to the time of service of the Complaint (R.A. p. E182).

Records introduced at trial show that there was approximately \$61,008.52 in appreciation in the retirement account from the time of the second marriage to the time of filing for divorce (i.e. \$632,599.75-\$571,591.23) and a difference of \$85,146.44 between the date of marriage and the date of service of the Complaint. Furthermore, there was approximately \$19,900.00 in appreciation during the two months that the parties lived together after their re-marriage (i.e. \$591,490.66-\$571,591.23).

At the time of the second marriage, Plaintiff's self-employment IRA with Morgan Stanley was worth \$24,403.30 (R.A. p. E212). In March 2013, the account was valued at \$24,403.90 (R.A. p. E213). It was worth \$24,404.51 on June 30, 2013 at around the time Plaintiff filed for divorce (R.A. p. E214). There was little to no appreciation of this account during the actual term of the marriage.

The court found that there was "only a brief period of separation" but the court also acknowledged that a divorce Judgment was rendered on their first marriage on March 26, 2004 (Complaint was served on April 1, 2003). Christopher moved back into the home in May of 2007 after about a four year hiatus in any type of relationship between the Parties (R.A. p. T39:5-10).

Despite this break of four years following the 2004 divorce, the Essex Probate Court found:

that the parties' economic marital partnership began during their cohabitation period prior to the marriage. The parties began living together in May, 2007 (6.17 years). Additionally, the parties were married for 7.83 years prior to their first divorce. The parties have been in a relationship, with only a brief period of separation, for eighteen years (i.e. the number of years between the parties' first marriage and the date of service on the

current Complaint for Divorce.) (R.A. p. A43, para. 11).

Influenced by this determination, the Court ordered, amongst other things, that Christopher, in addition to \$917.00 a week in child support, pay alimony in the amount of \$1,106.00 per week for fourteen (14) years; that Christopher's Morgan Stanley Account be divided so that Ellen receives \$306,761.33; and Christopher pay 80% of college expenses and 100% of secondary school tuition (R.A. pp. 38-40). It is this Judgment that is the subject matter of this appeal (R.A. pp. A38-40).

SUMMARY OF THE ARGUMENT

DID THE TRIAL COURT ERR OR EXCEED ITS AUTHORITY IN RENDERING ITS JUDGMENT WHEN CONSIDERED AS A WHOLE AND IN REGARD TO SPECIFIC PROVISIONS RELATED TO ALIMONY, PROPERTY DIVISION, AND THE PARTIES' PROPORTIONAL SHARE OF THE CHILDREN'S SECONDARY AND COLLEGE EDUCATIONAL EXPENSES?

The Court exceeded its authority in rendering its alimony award, in its property division, and in regard to the proportion of tuition that it ordered each party to pay. The court's calculation of the duration of the economic relationship clearly controlled its findings. The court's finding that "the parties have been in a economic marital partnership, with only a

brief period of separation, for eighteen years (i.e. the number of years between the parties' first marriage and the date of service on the current Complaint for Divorce)" (R.A. p. A43, p. 11) lacks the support of the evidence, constitutes an abuse of discretion, and violates the governing legal standard.

From 2003 to very late in 2006, the Parties had little to no relationship (R.A. p. T39:5-10). Ellen was fully in control of the house from February 2003, in that she took care of everything related to the house up until the time of trial (R.A. p. T71: 3-14). She also testified that since 2003, when Christopher moved out, that the Parties have had separate financial accounts and had no joint checking accounts, nor other joint accounts, nor joint credit cards (R.A. p. T71: 19-25). The Court disregarded the fact that the overwhelming foundation of the Parties' "economic marital partnership" from May 2007 to their second marriage was the \$7,600.00 a month alimony order; the fact that they had children together; that they did not share a bank account or any other joint accounts or credit cards. Even if this Court finds that the trial court had the discretion to include the months when the parties started living together in May of

2007, despite the above lack of economic union or planning, there should be no discretion to include the years of their first marriage, or the time period following service of the Complaint in their first divorce through May of 2007- when they had little contact (approximately 49 months).

The erroneous finding of an eighteen year economic marital partnership with the finding of "only a brief period of separation" set the court on the path where it also erroneously divided Christopher's retirement account. The Court found that Wife contributed to more than half of the accumulation of the account, despite the fact that she contributed no monies to the account as the employer of husband contributed most of the monies. The Court exceeded its authority and was plainly wrong and excessive in awarding fifty-five percent of the retirement account to Ellen after concluding that she contributed more than half of the account during a time when she was receiving substantial court ordered support from Christopher.

Additionally, the Court's judgment ordered Husband to pay all of the secondary school costs and eighty percent of the college costs of both children.

The court exceeded its authority in not limiting the contribution that Christopher would have to make and allowing for attendance at any school without making sufficient findings to support such an Order- particularly when the Order allows the children to attend private schools and when he will still be paying child support.

ARGUMENT

I. THE COURT EXCEEDED ITS AUTHORITY UNDER THE ALIMONY REFORM ACT OF 2011 IN ORDERING 14 YEARS OF GENERAL ALIMONY

The relationship that the parties had prior to the actual date of the second marriage was insufficient to warrant increasing the duration of the marriage for purposes of calculating the length of marriage to eighteen years. The Court exceeded its authority in awarding fourteen years of alimony when the actual length of marriage was under seven months long from the date of marriage to service of the Complaint, not even considering that Husband was asked to move out prior to the Parties being married for two months. Any economic marital partnership that the parties may have had prior to their actual marriage date was insufficient to warrant adding such a

substantial amount to the actual duration of the marriage for purposes of calculating the duration of the marriage and in awarding fourteen years of alimony.

The Alimony Reform Act of 2011 notes that "Length of Marriage is the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the Commonwealth of Massachusetts" (Chapter 124 of the Acts of 2011, Section 48(f)). The parties were married on December 22, 2012 and a Petition for Divorce was filed on June 23, 2013 and served on July 18, 2013 (R.A. p. A43). Based on this statutory language alone, four (4) months of alimony should have been the limit if the trial court did not decide to add duration to the actual marriage under Section 48(f). While the Alimony Reform Act of 2011 established that the "court shall have discretion to increase the duration of marriage where there is evidence that the Parties' economic marital partnership began during their cohabitation period prior to the marriage," the court did not properly apply that Christopher was paying alimony during this time period and the parties had no joint accounts.

For general term alimony, the Alimony Reform Act of 2011 allows for a deviation beyond the time limits of half the length of a marriage of 5 years or less when "upon a written by the court that deviation beyond the time limits of this section are required in the interests of justice" (Chapter 208, Section 49(b)). The court did not attempt to make findings that this decision was in the interest of justice, but instead elected to increase the duration of the marriage.

Furthermore, contrary to the trial court's finding, the Parties could not have operated in "exactly the same way" (R.A. p. A43) as in their first marriage during the cohabitation period or during the second marriage. Such a belief is not a proper foundation for including the cohabitation period in the length of the marriage calculations. After the 2004 divorce, the Parties had no joint bank accounts or joint credit cards and Christopher was under court order to pay alimony which Ellen was using to manage and pay all of the household expenses. Additionally, the Parties both signed and filed affidavits in February of 2012 noting that they were not living together as "husband and wife."

Furthermore, the Parties clearly asserted to the trial court in their affidavits and petition that they were not living as Husband and Wife in February of 2012 (R.A. pp. A26-31). At the very least, the Court should not establish that they were in an economic marital partnership until after such pleadings had been dismissed. Had the trial court properly found that a seven month marriage existed, the award of alimony should be for no more than four months.

Additionally, this judgment conflicts with the reflections of the court offered to the parties that this appeared to be more like a rehabilitative alimony case rather than not" (R.A. p. T23:12-25).

II. THE COURT EXCEEDED ITS AUTHORITY IN USING THE TIME PERIODS WHERE THERE WAS A CLEAR BREAK IN THE PARTIES' RELATIONSHIP IN CALCULATING THE DURATION OF ALIMONY

The Court characterized the time period between the Parties' first divorce and Husband moving into the Wife's home as a "brief period of separation" but it was over a four year period from when Christopher was served with the Complaint on April 1, 2003 to when he moved back into Ellen's home in May 2007 (R.A. p. T71:3-14). The time period between April 2003 and May

2007 should not be used to calculate the duration of alimony and the Court exceeded its authority in including this 49 month period. Such should not be accepted by this Court as it is clearly erroneous. Nystrom at 1121, citing Whelan v. Whelan, 74 Mass.App.Ct. 616, 619 (2009).

While there is little guidance within the Alimony Reform Act of 2011 and case law to detail what "an economic marital partnership" consists of, it should not consist of time from a previous marriage, or time which is a clear break between the relationship of the parties. The law does not include language which allows discretion to the Court to include years between the Parties' marriages or relationships.

The court failed to document specific reasons as to why the Parties' relationship amounted to an "economic marital relationship" during this time period. The court exceeded its discretion in including this time in its alimony calculations related to the length of alimony. The evidence presented at trial and within the Findings of Fact support that there was a significant break in the parties relationship of numerous years. In fact, following their separation in February of 2003, the

Parties started talking again in late 2006. Ellen testified:

Well it kind of started around the end of 2006. Chris and I just started to get closer again. I mean when he'd drop the kids off, he'd come in the house or if I dropped them off, I'd go in his house. Sometimes he'd come over and have dinner with us, we had family game night and we just grew closer (R.A. p. T39:5-10).

From 2003 to very late in 2006, the Parties had little to no relationship. In May of 2007, Christopher moved into Ellen's home. Ellen testified that Christopher moved out of the marital house in February of 2003, right around the time she filed for divorce and she was fully in control of the house at that point from 2003, in that she took care of everything related to the house up until the time of trial (R.A. p. T71: 3-14). She also admitted that since 2003, when he moved out, that the parties have had separate financial accounts and had no joint checking accounts, nor other joint accounts, nor joint credit cards (R.A. p. T71: 19-25).

Even if this Court believes that the trial court has the discretion to include the time period after May of 2007 when Christopher moved back into the house until this Complaint was served, despite the lack of

economic union or joint accounts and the ordered payment of alimony, it should not allow a clear four year gap to be included.

Under G.L. c. 208, § 49(b), if a trial court finds the duration to be "10 years or less but more than 5" sixty percent (60%) of the months can be awarded. The maximum length that could be found from a seventy-four (74) month union, based on the Alimony Reform Act, would be no more than 3.7 years of alimony.

III. THE COURT EXCEEDED ITS AUTHORITY IN INCLUDING THE LENGTH OF THE PARTIES' FIRST MARRIAGE IN CALCULATING THE DURATION OF ALIMONY

While there is little guidance within the Alimony Reform Act of 2011 and case law to detail what "an economic marital partnership" consists of, it should not consist of the combination of two different and distinct time periods. While the Alimony Reform Act of 2011 allows discretion to the court to include time periods where there was "an economic relationship" before the marriage in question, there is no authority to include time, for purposes of alimony calculations, prior to the start of the "economic marital partnership."

Furthermore, in the 2004 Agreement of the Parties, they waived and renounced "all and every interest of any kind of character which either may now have or may hereafter acquire in or to any real or personal property of the other, whether now owned or hereafter acquired by either" (R.A. p. A6, para. 2). While this paragraph or other parts of the agreement admittedly could not anticipate "economic marital relationship" claims, it is understood that the Agreement is a resolution of all claims of the parties against each other, and it should also support Christopher's claim that the time period of the first marriage should not be included in "economic marital partnership" calculations, particularly when there is a clear break between the time periods of the marriages.

IV. THE COURT EXCEEDED ITS AUTHORITY IN AWARDING ALIMONY WITHOUT ESTABLISHING A SUFFICIENT NEED FOR ALIMONY AND/OR IN MAKING SUFFICIENT FINDINGS TO SUPPORT THE NEED FOR THE LENGTH AND AMOUNT OF ALIMONY AWARDED

The court did not make sufficient findings that the second marriage impacted the standard of living which Ellen had been enjoying from the monies received monthly under the 2004 Alimony order or that an

increase in monies was needed to maintain that standard of living, if any increase did occur. Sampson v. Sampson, 62 Mass.App.Ct. 366, 369 (2004). The trial court did not sufficiently delineate how the second marriage lifestyle was different from the lifestyle Ellen had prior to the marriage or cohabitation, or that there was a need for alimony to preserve that lifestyle (Doktor v. Doktor, 470 Mass. 547, 547 (2015)). The Court also did not appropriately factor in that the children are now older and have less transportation requirements, which would allow Ellen to increase her work hours. Ellen acknowledged that she would have more work opportunities in the future because of their age, depending "on what their schedules are like" (R.A. p. T73:23). The court did not make specific enough findings to show how Ellen would be "dependent" on Christopher. There was a lack of specific findings as Ellen's actual weekly needs and if the needs or station changed as a result of the marriage, or cohabitation.

In regard to the facts the court did find, the trial court committed clear error in regard to finding that Ellen lost economic opportunity during the time period between the Parties' marriages. During this

time period, Ellen received \$7,600.00 per month in alimony. She made financial decisions based upon this support that she was receiving.

The trial court noted that "She has not worked full-time outside the home since 1997" (R.A. p. T30) which was the year the parties' daughter was born. Wife began working part-time during the Parties' first marriage. She did not give up employment opportunities due to the 2012 marriage but made decisions to reduce hours based upon the fact that she was receiving a level of court-ordered support that allowed her to make such decisions. This marriage, nor the cohabitation period that the court found, caused her to start to reduce hours. The Court also made no finding to the difference of care required for the children at the present time as compared to the time of the first divorce. Due consideration should be made of the fact that the children are older, require less supervision and are able to help out more around the house, enabling Wife the opportunity to work more hours if she desired.

Additionally, Wife's ability to acquire future assets and income did not substantially change from the start of the second marriage to date of Complaint.

At the start of the second marriage, Wife was working part-time. She also was diagnosed with sarcoidosis seventeen years ago (R.A. p. T158) and entered into this second marriage with that diagnosis already. There was insufficient evidence introduced, if any, that her medical conditions limited the number of hours she could work, or prevented her from working full-time, if the children's schedules allowed it. For all of these reasons, the trial court's alimony award is not properly supported and should be modified.

V. THE COURT EXCEEDED ITS AUTHORITY IN ITS PROPERTY DIVISION ORDER

The court made clear error in dividing the retirement accounts of Christopher. The court ordered that Ellen receive 55% of the retirement account. The Supreme Judicial Court has ruled that a judgment with respect to property division will not be reversed unless it is plainly wrong and excessive" (Zaleski v. Zaleski, 469 Mass. 230, 236 (2014)). The trial court made such a reversible error in finding that Ellen contributed more to the accumulation of the assets, and in failing to apply that Christopher was paying a significant amount of alimony during this time period

which allowed Ellen to work part-time (per diem) and to be home with the children and maintain the home. Receiving \$7,600.00 a month in alimony also gave Ellen a strong incentive not to seek additional hours as such would lessen her alimony award. By arriving at the determination to unequally divide the retirement account, the court is punishing Husband, in effect, for complying with the court's own alimony order. Ellen should be limited to a division of the retirement account starting from the time of the second marriage, as Christopher continued to pay \$7,600.00 per month in alimony up until October 2013 after which he paid \$7,000.00 per month. It was clearly erroneous to allow Ellen to receive the benefit of such a large amount of alimony while also using compliance with the Order against Christopher and, in effect, allowing the redistribution of assets of the Parties acquired outside of the marriage by applying an "economic marital relationship" analysis to the property distribution.

The law cannot fairly support that there can be a "voluntary" economic marital partnership when one party is under a court order to pay alimony. Furthermore, Ellen clearly asserted in an affidavit

and in the Joint Petition that they were not living as Husband and Wife in February of 2012 (R.A. pp. A26-31). For all these reasons, this Court should reduce the property division order to limit Ellen to a 50% share of the appreciation of the account during the time of the actual marriage.

VI. THE COURT EXCEEDED ITS AUTHORITY IN ITS ORDER FOR PAYMENT OF SECONDARY AND COLLEGE COSTS AND EXPENSES

The Court exceeded its authority in ordering Christopher to pay all the secondary school tuition and in ordering him to pay 80% of the college expenses for his daughter. While courts may consider "all relevant equitable factors" in addressing college expenses (Mandel v. Mandel, 74 Mass.App.Ct. 348, 355 (2009)), the court erred by not limiting the amount that Christopher would be exposed to paying and did not consider that the monies that it awarded Ellen out of Christopher's retirement account could be used for college tuition and expenses. The order did not limit him to paying one-third of private school expenses or cap the contributions based on in-state tuition. The court erred when it made no findings about the lack of adequacy of in-state tuition and when it did not

appropriately factor in that Christopher would be paying child support during this time period when he would be paying eighty percent of the college tuition and all of the secondary school tuition.

While this Court has recognized the statutory authority to enter orders for the payment of college educational expenses for children nearing college (Ketterle v. Ketterle, 61 Mass.App.Ct 758, 765 (2004)), as the trial court did in this matter, the proportion that Husband was ordered to pay acts as a further transferring of assets of the Parties, given that Ellen was awarded \$306,761.33 in retirement assets and is not obligated to pledge any of those assets toward the children's education.

CONCLUSION

In conclusion, Appellant requests that this Court vacate the Judgment from November 28, 2014 and direct that any judgment should be based upon a seven month marriage and that Ellen is only entitled to up to a 50% portion of the appreciation of Christopher's individual retirement account that occurred during the actual term of the marriage.

Alternatively, if the Court believes that the trial court has the discretion to include the cohabitation period starting in May 2007, Appellant asks this Court to reduce the alimony award by decreasing the statutory time of the alimony to no more than the 3.7 years and that the division of the retirement account be modified to 50/50 for that time period.

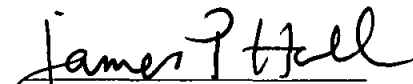
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Date: May 11, 2015

Certification Under R.A.P. 16(k)

I certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R.A.P. 16, 18, and 20.


James P. Hall

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX DIVISION

DOCKET NO. ES-13D-1509

ELLEN M. DUFF-KAREORES,
Plaintiff

v.

CHRISTOPHER KAREORES,
Defendant

JUDGMENT

*(On Plaintiff's Complaint for Divorce filed June 19, 2013
On Defendant's Counterclaim filed August 5, 2013)*

All persons interested having been notified in accordance with the law, and after hearing, it is adjudged nisi that a divorce from the bonds of matrimony be granted the plaintiff for the cause of irretrievable breakdown of the marriage pursuant to G. L. c. 208, § 1B, and that upon and after the expiration of ninety (90) days from the entry of this judgment it shall become absolute unless upon the application of any person within such period, the Court shall otherwise order. It is further ordered that:

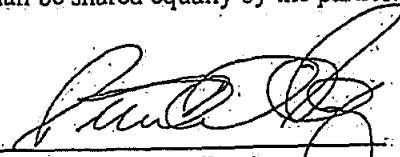
1. **Legal Custody.** The parties shall have joint legal custody of their two minor children, Catherine (DOB July 16, 1997) and Michael (DOB February 1, 2001).
2. **Physical Custody.** Wife shall have primary physical custody of the two minor children.
3. **Parenting Time.** Husband shall have parenting time with the children every other weekend from Friday after school until Sunday at 5:00 p.m. Additionally, Husband shall have parenting time with the minor children each Wednesday evening from after school until drop off at school the following morning.
4. **Holiday Schedule.** In addition to the parenting schedule set forth above, the parties shall abide by the following holiday schedule with the children, which shall supersede the regular parenting schedule:
 - a. Husband shall have parenting time with the minor children on Christmas Eve

- from 10:00 a.m. until 5:00 p.m. Wife shall have parenting time on Christmas Eve at 5:00 p.m. and shall have the children on Christmas Day.
- b. Both parties shall be entitled to two nonconsecutive weeks with the children during their summer school vacation. The parties shall notify each other in writing of their designated vacation weeks no later than April 1 of each year. In the event the parties cannot agree, Husband shall have first choice in odd-numbered years and Wife shall have first choice in even-numbered years.
5. **Child Support.** Commencing on the first Friday following the date of this Judgment, and on each Friday thereafter, Husband shall pay child support to Wife in the amount of \$917.00.
6. **Private Secondary School.** Husband shall continue to pay the tuition for the children's respective private, secondary schools.
7. **College Education Expenses.** The parties shall each be required to contribute to their daughter's college education expenses in proportion to their income. Husband shall be required to pay 80% of the daughter's college education expenses and Wife shall be required to pay 20%. College education expenses shall include expenses in connection with applying to college, including but not limited to application fees, testing fees, tutor charges and tuition, room, board, books, usual and normal student activity fees and other expenses normally charged on college and university bills.
8. **Medical Insurance.** Husband shall be required to maintain his medical and dental insurance coverage or its reasonable equivalent for the benefit of Wife and the children. If there is an additional cost associated with Wife's coverage, Husband shall notify Wife and give her the opportunity to continue coverage upon her payment of the additional cost. After exhaustion of Husband's health savings account, the parties shall share equally the uninsured medical and dental expenses for the children, after Wife pays the first \$250.00/per child/per year. Each party shall pay his or her own uninsured medical and dental costs.
9. **Dependency Exemptions.** The parties shall each claim one child as a dependency exemption on his or her respective tax returns. Wife shall claim Catherine (DOB July 16, 1997) and Husband shall claim Michael (DOB February 1, 2001). Upon such time as an exemption is no longer available for Catherine, the parties shall alternate the use of Michael's exemption with Wife taking the first year. In the event that a party is unable to derive a tax benefit from the use of a dependency exemption for any given tax year, he/she shall notify the other party by March 1 of the following year and the other party shall be entitled to the use of same.
10. **Alimony.** Commencing on the first Friday following the date of this Judgment, and on each Friday thereafter, Husband shall pay alimony to Wife in the amount of \$1,106.00.

Husband's obligation to pay alimony shall terminate fourteen years from the date of this Judgment.

11. **Life Insurance.** Husband shall keep in effect a life insurance policy in the amount of \$250,000.00, naming Wife as the beneficiary. For so long as Husband has any child support or alimony obligation to Wife, Husband shall keep said policy in full force and effect, shall pay all premiums, dues and assessments thereon, and shall, upon request, transmit to Wife, all copies of receipts showing that such dues, premiums, and assessments have been paid.
12. **Liabilities.** Each party shall be responsible for any and all debts and liabilities listed on their respective Financial Statements dated September 8, 2014.
13. **Marital Home.** Wife shall keep all right, title, and interest in the marital home located at 53 Old Yankee Road, Haverill, Massachusetts. Wife shall be solely responsible for the mortgage, taxes, insurance, and maintenance expenses and shall indemnify and hold Husband harmless from and against any liability therefrom.
14. **Motor Vehicles.** Wife shall be assigned the Ford Escape SUV and Chevy Spark Compact listed on her financial statement and will be responsible for all operating costs in connection therewith. Husband shall be assigned the Saturn Outlook SUV listed on his financial statement and will be responsible for all operating costs in connection therewith.
15. **Bank Accounts.** Wife shall be awarded her individual Bank of America accounts listed on her financial statement. Husband shall be awarded his individual TD Bank accounts listed on his financial statement.
16. **Husband's Retirement Accounts.** Husband shall divide, via Qualified Domestic Relations Order, his Morgan Stanley account number ***3-125 so that Wife receives \$306,761.33. The cost of the QDRO, if any, shall be shared equally by the parties.

November 28, 2014


Peter C. DiGangi, Justice
Essex Probate and Family Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX DIVISION

DOCKET NO. ES-13D-1509

ELLEN M. DUFF-KAREORES,
Plaintiff

v.

CHRISTOPHER KAREORES,
Defendant

RELEVANT PROCEDURAL HISTORY, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RATIONALE

*(On Plaintiff's Complaint for Divorce filed June 19, 2013
On Defendant's Counterclaim filed August 5, 2013)*

This matter came before the Court (DiGangi, J.) for a trial on the merits on October 20, 2014. Ellen M. Duff-Kareores (hereinafter "Wife") was present and represented by Attorney Lynn M. Murphy. Christopher Kareores (hereinafter "Husband") was present and represented by Attorney James P. Hall. Both parties testified and were cross-examined.

After trial, and consideration of the evidence and all reasonable inferences drawn therefrom, the Court hereby enters the following Procedural History, Findings of Fact, Rationale, and Conclusions of Law.

RELEVANT PROCEDURAL HISTORY

1. On June 19, 2013, Wife filed a Complaint for Divorce, alleging an irretrievable breakdown of the marriage pursuant to G. L. c. 208, § 1B.
2. On August 5, 2013, Husband filed an Answer and Counterclaim for Divorce.
3. On February 28, 2014, Husband filed a Motion for Temporary Orders.
4. On September 9, 2014, the Court (DiGangi, J.) entered the following Temporary Order:
"Trial in this matter shall resume on October 20, 2014 at 8:30 a.m. in Lawrence."

FINDINGS OF FACT

Basic Factual Information

1. The parties' first marriage was on May 20, 1995. On March 26, 2004, a Judgment of Divorce *Nisi* issued. The Judgment incorporated but did not merge, with the exception of those provisions relating to minor children, alimony, life insurance, and medical insurance, a Separation Agreement signed by the parties on the same date.
2. The Separation Agreement provided, *inter alia*, that:
 - a. Husband shall pay to Wife, as alimony, for her support the sum of \$7,600.00 monthly commencing upon the signing of this agreement. These alimony payments shall terminate upon the death of Wife or until modified by agreement of the parties or order of a Court of competent jurisdiction after the filing of a Complaint for Modification based upon a material change in circumstances. There is no liability for Husband to make any payment (in cash or property) as a substitute for such payments after the death of Wife. These alimony payments may be reviewed upon the remarriage of Wife.
 - b. Husband shall maintain his present group John Alden medical insurance policy, or its true equivalent, for the benefit of the children until each achieves emancipation.
 - c. Husband will maintain Wife as a covered person on his present medical, hospitalization and dental coverage for so long as she may be a covered person thereunder, or such other equivalent group health coverage which is available to him through his present or future employment or association, at no cost to her, for so long as she may be covered at a cost which does not exceed Husband's out-of-pocket cost for his family plan coverage. He will not take or approve any action to cancel such coverage. If Wife's continued coverage requires payment costs in excess of that for the Husband's family plan, Husband shall forthwith notify Wife thereof and give her the opportunity to continue such coverage.
 - d. Husband and Wife shall have joint legal custody of any unemancipated child, with physical custody of each such child remaining in Wife.
3. Husband began living in the same house as Wife and their children beginning in May, 2007.
4. The parties were remarried on December 22, 2012 and separated in February, 2013.
5. The parties have two children together. Catherine Jean, born on July 16, 1997, is seventeen years old and Michael Edward, born on February 1, 2001, is thirteen years old.
6. The parties' daughter is a senior at Central Catholic High School in Lawrence,

Massachusetts.

7. The parties' son is in eighth grade at Sacred Heart School in Bradford, Massachusetts.
8. Wife currently resides at 53 Old Yankee Road in Haverhill, Massachusetts.
9. Husband currently resides at 142 Pleasant Valley Street in Methuen, Massachusetts.

Length of the Marriage

10. The Complaint for Divorce was served on Husband on July 18, 2013. The duration of the marriage from the date of service is six months.
11. However, the Court finds that the parties' economic marital partnership began during their cohabitation period prior to the marriage. The parties began living together in May, 2007 (6.17 years). Additionally, the parties were married for 7.83 years prior to their first divorce. The parties have been in a relationship, with only a brief period of separation, for eighteen years (i.e. the number of years between the parties' first marriage and the date of service on the current Complaint for Divorce).
12. During their cohabitation period, the parties functioned exactly as they had during their previous marriage. Husband was the primary wage earner; Wife was the primary homemaker and caretaker for the children. Therefore, the Court finds that the parties both contributed to the economic marital partnership during the cohabitation period.

Age of the Parties

13. Wife was born on May 29, 1961 and is fifty-three years old.
14. Husband was born on July 2, 1963 and is fifty-one years old.

Health of the Parties

15. Wife suffers from fibromyalgia and sarcoidosis.
16. Wife was diagnosed with sarcoidosis seventeen years ago. She has experienced exacerbations of the condition, including shortness of breath, cough, fatigue, myalgia, and arthralgia.
17. When these flair ups occur, Wife must undergo treatments, including chemotherapy medication and physical therapy. The flair ups last anywhere between two weeks to several months.

18. In 2010, Wife was also diagnosed with fibromyalgia. Wife experiences generalized muscle pain, which at times can be debilitating. Wife also experiences rheumatoid arthritis symptoms, including swelling of her joints in her hands, feet, and left hip. Wife testified credibly that these symptoms affect her work as a registered nurse.
19. Husband is in good health.

Station in Life:

20. The parties enjoyed an upper-middle-income lifestyle throughout their marriage.
21. The children have, by agreement of the parties, been raised Catholic and always attended Catholic private school.
22. Throughout the time the parties lived together, the family had a membership at the Cedardale Health & Fitness Club.

Occupation, Vocational Skills, Employability, and Income:

23. Wife is a registered nurse and works part-time, per diem, at Bulfinch Medical Group at Massachusetts General Hospital in Boston, Massachusetts.
24. Wife received her nursing degree in 1983. From 1983 to 1990, Wife worked full-time at the Hale Hospital. In 1990, Wife became employed full-time at the Lahey Clinic in Burlington, Massachusetts.
25. After the birth of the parties' daughter in 1997, Wife returned to work briefly until Husband obtained gainful employment in December, 1997.
26. Wife earns weekly income of \$450.00 from her employment at Bulfinch Medical Group.
27. Wife is employable commensurate with the foregoing.
28. Husband is employed as a physician by Merrimack Valley Emergency Associates (hereinafter referred to as "MVEA") in Boston, Massachusetts with duties at Lowell General Hospital. Husband began working at MVEA in 1997. Additionally, Husband works part-time at the Anna Jacques Hospital Wound Center in Newburyport, Massachusetts.
29. Husband's reported income at MVEA in 2013, according to his W2, was \$335,499.26. However, according to his W2, Husband contributed an additional \$9,180.00 to his retirement account which was not included in his taxable income or disclosed on his financial statement as income. Additionally, Husband did not disclose that he receives

profit sharing from MVEA. Husband's profit sharing in 2013 was \$44,440.00.

30. The Court finds that Husband's total income in 2013 from MVEA, including his retirement contribution and profit sharing, was \$389,119.26 (i.e. \$7,483.06 per week).
31. Husband receives medical insurance through his employment at MVEA at no cost to him. Currently, the children and Wife are covered under Husband's medical insurance plan. Husband has a health savings account, which is used for the children's uninsured medical expenses.
32. Husband reports self-employment income from his work at the Anna Jacques Hospital Wound Center in the amount of \$384.42 per week.
33. The Court finds that Husband's gross weekly income is \$7,867.48.
34. Husband is employable commensurate with the foregoing.

Estate of the Parties

35. Wife owns the marital home located at 53 Old Yankee Road, Haverill, Massachusetts. The home has a fair market value of \$435,000.00. The house is subject to a first mortgage of \$406,200.00 and a second mortgage of \$12,000.00, thereby leaving equity of \$16,800.00.
36. Wife has a Ford Escape SUV with a value of \$16,000.00 subject to a loan of \$15,300.00, thereby leaving a net equity of \$700.00.
37. Wife has a Chevy Spark Compact with a value of \$15,000.00 subject to a loan of \$15,400.00, thereby leaving a net equity of -\$400.00.
38. Wife has two checking accounts at Bank of America with a total balance of \$1,700.00.
39. Husband has a Saturn Outlook SUV with a value of \$9,100.00.
40. Husband has two checking accounts at TD Bank with a total balance of \$8,837.53.
41. Husband has Morgan Stanley retirement accounts with the account number XXX3-125 totaling \$823,911.52, namely:
 - a. Morgan Stanley account number XXX3-125- \$796,774.51 and
 - b. Morgan Stanley IRA- \$27,137.01.
42. At the time of the parties' first divorce, Husband had retirement funds in the approximate amount of \$140,000.00. Each party received \$70,000.00. Out of her \$70,000.00, Wife

bought out Husband's share of the equity in the marital home (i.e. \$40,000.00).

43. At the time the parties moved in together after the first divorce, in May of 2007, Husband's retirement accounts had a value of \$266,163.64.
44. Husband has acquired \$557,747.88 in retirement assets since the parties resumed living together.

Needs of the Parties

45. Wife has \$99.41 in weekly expenses deducted from pay and \$2,845.00 in weekly expenses not deducted from pay, including a weekly mortgage payment in the amount of \$563.00.
46. Husband has \$3,978.68 in weekly expenses deducted from pay, including a weekly child support payment of \$1,384.62 and a weekly spousal support payment of \$230.77. Additionally, Husband has \$2,933.35 in weekly expenses not deducted from pay, including a weekly payment of \$1,230.12 toward his liabilities listed in paragraph forty-eight below.

Liabilities

47. Wife has the following individual liabilities:
 - a. One Main Financial- \$3,270.00;
 - b. GE Credit- \$1,650.00;
 - c. Sleepy's Credit- \$2,400.00; and
 - d. Empire Today- \$2,718.00.
48. Husband has the following individual liabilities:
 - a. American Express- \$14,596.11;
 - b. Chase- \$9,603.49;
 - c. Citibank- \$19,474.53;
 - d. Discover- \$5,702.46;
 - e. US Treasury- \$15,278.00; and
 - f. DOR Massachusetts- \$312.00.

Opportunity to Acquire Future Assets and Income

49. Wife has little opportunity to acquire future assets and income. Wife is fifty-three years old and suffers from significant health issues. Additionally, Wife lost economic opportunity as a result of the marriage and economic marital partnership, which began during the cohabitation period between the parties' first and second marriage. Wife gave up working full-time as a registered nurse in order to raise the parties' children. She has

not worked full-time outside of the home since 1997 (i.e. the year the parties' daughter was born).

50. Husband has the opportunity to acquire for assets and income through his employment.

Present and Future Needs of the Children

51. The parties' daughter, Catherine, is seventeen years old and is a senior at Cental Catholic High School in Lawrence, Massachusetts. The tuition for the 2014-2015 school year is \$12,226.00.
52. The parties' son, Michael, is thirteen years old and is in eighth grade at Sacred Heart School in Bradford, Massachusetts. The tuition for the 2014-2015 school year is \$4,400.00.
53. By agreement of the parties, the children have been raised Catholic and have always attended Catholic private school. The prior divorce judgment provides that the children will attend private school if Husband pays the cost, an acknowledgment that Wife was not in a financial position to contribute to same.
54. Wife pays for Catherine's car expenses, including gas and car insurance. Catherine's car expenses total approximately \$2,000.00 per year.
55. Catherine is a high honors student and expects to attend college in the fall. She has applied to Boston College, Providence College, Salve Regina University, Merrimack College, and Suffolk University.
56. Wife has kept Husband informed of Catherine's college plans, but Husband has expressed little to no interest in same.
57. During the previous academic year, Catherine was inducted into the National Honor Society; involved in her school's Junior Night prayer service; recognized at the Junior Awards Night; attended Junior Prom; was involved in two theater productions; and was confirmed. Additionally, Catherine took driver's education and obtained her license. Husband did not attend any of Catherine's activities last year, nor was he involved in her learning to drive or obtaining her driver's licence.
58. Michael participates in two baseball teams, three basketball teams, and the academic bowl team. He is involved in theater productions, parent-teacher conferences, science fairs, and masses and prayer services. Husband has not attended any of Michael's activities since February, 2013.

59. Husband has had little contact with both children since February, 2013.
60. After the parties' separation in February, 2013, Catherine began attending therapy.

Conduct/Contribution of the Parties

61. Both parties contributed to their financial success throughout the course of their relationship. Husband's contribution was primarily financial, whereas Wife worked fewer hours so she could be available to care for the parties' two children.
62. Throughout the course of the parties' relationship, Wife was responsible for the vast majority of the cleaning, shopping, cooking, and laundry. Additionally, Wife was primarily responsible for the child care responsibilities. She took care of the children's day-to-day needs, including baths and meals. Wife was responsible for transporting the children to their activities and appointments.
63. Wife was responsible for transporting the children to and from school. Due to the fact that the children attended private school, there was no transportation provided through the children's school systems.
64. Wife transports Michael to all of his activities listed in paragraph fifty-eight above.
65. Wife was solely responsible for teaching Catherine to drive and for accompanying Catherine on college visits. Additionally, Wife assisted Catherine with the college application process, including entrance exams.
66. The Court finds that Wife contributed more to the financial success of the parties throughout their relationship. Wife worked part-time and was for the most part, fully responsible for the child care and homemaking responsibilities. Due to her greater contribution and her lesser ability to acquire future assets and income, the Court finds that it is equitable for Wife to receive fifty-five percent of the retirement accounts Husband has acquired since the parties resumed living together.

RATIONALE

The parties agree that they should share legal custody of the minor children and that Wife should have primary physical custody. Additionally, the parties agree that Wife should continue to hold title to the marital home, each party should be awarded his or her respective bank accounts and motor vehicles, and that each party should be responsible for his or her own liabilities. Therefore, the primary issues in dispute in this matter are child support; alimony; education expenses; and an equitable division of Husband's retirement accounts.

Child Support

The Court applied the Massachusetts Child Support Guidelines on the first \$250,000 of the parties' combined income. With Wife earning \$450.00 per week and Husband earning \$7,867.00 per week, this resulted in a weekly child support payment from Husband to Wife in the amount of \$917.00.

Alimony

The Court then used the parties' remaining income to calculate alimony. The parties' combined available income above \$250,000 is \$3,509.00 per week. Wife's proportional share of this amount is \$175 and Husband's proportional share is \$3,334. Thirty-five percent of the difference between Wife's proportional share and Husband's proportional share is \$1,106 per week. Therefore, Husband shall pay to Wife weekly general term alimony in the amount of \$1,106 for a period of fourteen years. In determining the appropriate form of alimony and in setting the amount and duration of support, the Court considered: "the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; [and] lost economic opportunity as a result of the marriage." G. L. c. 208, § 53.

"Length of the marriage" is defined in § 48 as "the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage." The current Complaint for Divorce was served on Husband on July 18, 2013. The duration of the marriage from the date of service is six months. However, the Court finds that the parties' economic marital partnership began during their cohabitation period prior to the marriage. The parties began living together in May, 2007 (6.17 years). Additionally, the parties were married for 7.83 years prior to their first divorce. The parties have been in a relationship, with only a brief period of separation, for eighteen years (i.e. the number of years between the parties' first marriage and the date of service on the current Complaint for Divorce).

During their cohabitation period, the parties functioned exactly as they had during their previous marriage. Husband was the primary wage earner, Wife was the primary homemaker and caretaker for the children. Therefore, the Court finds that the parties both contributed to the economic marital partnership during the cohabitation period. The Court finds that the length of the marriage should be calculated from the date of the parties' first marriage to the date of service on the current Complaint for Divorce. The parties have been in a economic marital partnership, with only a brief period of separation, for eighteen years (i.e. the number of years between the parties' first marriage and the date of service on the current Complaint for Divorce).

The Court finds that Wife contributed more to the financial success of the parties throughout their relationship. Wife worked part-time and was for the most part, fully responsible for the child care and homemaking responsibilities. Due to her greater contribution, lesser ability to acquire future assets and income, poor health, lost economic opportunity as a result of the marriage, and inability to maintain the upper-income marital lifestyle, the Court finds that it is equitable to award Wife 35% of the difference between the parties' proportional share of income above \$250,000.00 per year. This results in a weekly alimony payment to Wife in the amount of \$1,106.00. The Court finds that the length of the parties' marriage is eighteen years and therefore the alimony shall continue for not longer than 80 per cent of the number of months of the marriage, which is fourteen years. Therefore, alimony shall terminate fourteen years from the date of this judgment.

Secondary School and College Education Expenses

The Court finds that Husband has the ability to continue paying for the children's private secondary school educational expenses. Additionally, the Court finds that it is equitable to require the parties to contribute to their daughter's college education expenses in proportion to their respective incomes. The Court subtracted Husband's child support and alimony obligations from Husband's income and added the amount to Wife's income in determining the proportional share. Therefore, Husband shall be required to pay 80% of the daughter's college education expenses and Wife shall be required to pay 20%. The Court does not yet make an order for the payment of the son's college expenses because the son is only thirteen and such an order is premature. See Ketterle v. Ketterle, 61 Mass. App. Ct. 758, 765 (2004) (For the two younger children, aged thirteen and ten at the time of the trial, we conclude that the [college expenses] order was premature).

Equitable Division of Marital Property

The only substantial marital asset is Husband's retirement accounts. In making an equitable division of this asset, the Court considered "the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive. In fixing the nature and value of the property to be so assigned, the [Court considered] the present and future needs of the dependent children of the marriage. The [Court also considered] the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit." G. L. c. 208, § 34.

The Court finds that Wife contributed more to the financial success of the parties throughout their relationship. Wife worked part-time and was for the most part, fully responsible for the child care and homemaking responsibilities. Due to her greater contribution, the length of the marriage, and Wife's lesser ability to acquire future assets and income, the Court finds that it

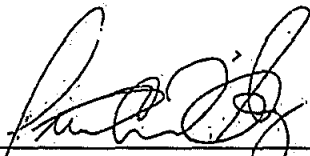
is equitable for Wife to receive fifty-five percent of the \$557,747.88 in retirement accounts Husband has acquired since the parties resumed living together (i.e. \$306,761.33). The Court has also considered its alimony award to Wife in making this equitable division of Husband's retirement accounts.

CONCLUSIONS OF LAW


1. The Court has jurisdiction over the parties and the subject matter. An irretrievable breakdown of the marriage has existed from the date of filing of this complaint to the date of the hearing. G. L. c. 208, § 1B.
2. The concept of property assignment or equitable division under G. L. c. 208, § 34, must be read to apply in a broad sense to the value of all contributions of the respective spouses toward the marital enterprise, and contemplates something more than determining which spouse's money purchased a particular asset. Putnam v. Putnam, 5 Mass. App. Ct. 10, 17 (1977).
3. Massachusetts General Laws "grants judges the authority to exercise a broad degree of discretion in assigning to either husband or wife all or any part of the estate of the other . . ." Adams v. Adams, 459 Mass. 361, 372 - 373 (2011).
4. "A party's 'estate' by definition includes all property to which he holds title, however acquired. Therefore, this provision gives the trial judge discretion to assign to one spouse, property of the other spouse whenever and however acquired." Rice v. Rice, 372 Mass. 398, 400 (1977) (citing Bianco v. Bianco, 371 Mass. 420, 422 (1976)).
5. In determining the appropriate form of alimony and in setting the amount and duration of support, the Court considered: "the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; [and] lost economic opportunity as a result of the marriage." G. L. c. 208, § 53.
6. "Length of the marriage" is defined in § 48 as "the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage."
7. For the two younger children of a divorce, aged thirteen and ten, a college expenses order at the time of trial was premature. See Ketterle v. Ketterle, 61 Mass. App. Ct. 758, 765

(2004).

November 28, 2014



Peter C. DiGangi, Justice
Essex Probate and Family Court



THE 189TH GENERAL COURT OF

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2011	Jump to: <input style="width: 50px;" type="text" value="2011"/> <input type="button" value="GO"/>
Chapter 124	AN ACT REFORMING ALIMONY IN THE COMMONWEALTH.

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Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The first sentence of section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following words:- under sections 48 to 55, inclusive.

SECTION 2. Said section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in place thereof the following sentence:- In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive.

SECTION 3. Said chapter 208 is hereby further amended by adding the following 8 sections:-

Section 48. As used in sections 49 to 55, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:-

"Alimony", the payment of support from a spouse; who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a court order.

"Full retirement age", the payor's normal retirement age to be eligible to receive full retirement benefits under the United States Old Age, Survivors, and Disability Insurance program; but shall not mean "early retirement age," as defined under 42 U.S.C. 416, if early retirement is available to the payor or maximum benefit age if additional benefits are available as a result of delayed retirement.

"General term alimony", the periodic payment of support to a recipient spouse who is economically dependent.

"Length of the marriage", the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

"Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse under a judgment.

"Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to compensate the recipient spouse for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

"Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to transition the recipient spouse to an adjusted lifestyle or location as a result of the divorce.

Section 49. (a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

- (1) If the length of the marriage is 5 years or less, general term alimony shall continue for not longer than one-half the number of months of the marriage.
- (2) If the length of the marriage is 10 years or less, but more than 5 years, general term alimony shall continue for not longer than 60 per cent of the number of months of the marriage.
- (3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.
- (4) If the length of the marriage is 20 years or less, but more than 15 years, general term alimony shall continue for not longer than 80 per cent of the number of months of the marriage.

(c) The court may order alimony for an indefinite length of time for marriages for which the length of the marriage was longer than 20 years.

(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient spouse has maintained a common household, as defined in this subsection, with another person for a continuous period of at least 3 months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

- (i) oral or written statements or representations made to third parties regarding the relationship of the persons;
- (ii) the economic interdependence of the couple or economic dependence of 1 person on the other;
- (iii) the persons engaging in conduct and collaborative roles in furtherance of their life together;
- (iv) the benefit in the life of either or both of the persons from their

relationship;

(v) the community reputation of the persons as a couple; or

(vi) other relevant and material factors.

(2) An alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite or for a finite duration, as may be appropriate. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age. The payor's ability to work beyond the full retirement age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown; provided, however, that in granting deviation, the court shall enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown; provided, however, that in granting an extension, the court shall enter written findings of:

(i) a material change of circumstance that occurred after entry of the alimony judgment; and

(ii) reasons for the extension that are supported by clear and convincing evidence.

Section 50. (a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, the occurrence of a specific event in the future or the death of either spouse; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be not more than 5 years. Unless the recipient has remarried, the rehabilitative alimony may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage;

(2) the court finds that the recipient tried to become self-supporting; and

(3) the payor is able to pay without undue burden.

(c) The court may modify the amount of periodic rehabilitative alimony based upon material change of circumstance within the rehabilitative period.

Section 51. (a) Reimbursement alimony shall terminate upon the death of the recipient or a date certain.

(b) Once ordered, the parties shall not seek and the court shall not order a modification of reimbursement alimony.

(c) Income guidelines in subsection (b) of section 53 shall not apply to reimbursement alimony.

Section 52. (a) Transitional alimony shall terminate upon the death of the recipient or a date certain that is not longer than 3 years from the date of the parties' divorce; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) No court shall modify or extend transitional alimony or replace transitional alimony with another form of alimony.

Section 53. (a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material.

(b) Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued. Subject to subsection (c), income shall be defined as set forth in the Massachusetts child support guidelines.

(c) When issuing an order for alimony, the court shall exclude from its income calculation:

- (1) capital gains income and dividend and interest income which derive from assets equitably divided between the parties under section 34; and
- (2) gross income which the court has already considered for setting a child support order.

(d) Nothing in this section shall limit the court's discretion to cast a presumptive child support order under the child support guidelines in terms of unallocated or undifferentiated alimony and child support.

(e) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony and rehabilitative alimony upon written findings that deviation is necessary. Grounds for deviation may include:

- (1) advanced age; chronic illness; or unusual health circumstances of either party;
- (2) tax considerations applicable to the parties;
- (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse;
- (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;
- (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;
- (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;
- (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor;
- (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and
- (9) upon written findings, any other factor that the court deems relevant and material.

(f) In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed.

(g) If a court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony or child support duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.

Section 54. (a) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(b) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

- (1) a party works more than a single full-time equivalent position; and
- (2) the second job or overtime began after entry of the initial order.

Section 55. (a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but shall not be limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; and other obligations of the payor.

(c) A court may modify orders to maintain security upon a material change of circumstance.

SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

(b) Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Under no circumstances shall said sections 48 to 55, inclusive, of said chapter 208 provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

- (1) Payors who were married to the alimony recipient 5 years or less, may file a modification action on or after March 1, 2013.
- (2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014.

(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.

(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.

SECTION 6. Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General Laws, or who will reach full retirement age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013.

SECTION 7. This act shall take effect on March 1, 2012.

Approved, September 26, 2011.

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G. L. c. 208, § 49

Section 49. (a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

(1) If the length of the marriage is 5 years or less, general term alimony shall continue for not longer than one-half the number of months of the marriage.

(2) If the length of the marriage is 10 years or less, but more than 5 years, general term alimony shall continue for not longer than 60 per cent of the number of months of the marriage.

(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.

(4) If the length of the marriage is 20 years or less, but more than 15 years, general term alimony shall continue for not longer than 80 per cent of the number of months of the marriage.

(c) The court may order alimony for an indefinite length of time for marriages for which the length of the marriage was longer than 20 years.

(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient spouse has maintained a common household, as defined in this subsection, with another person for a continuous period of at least 3 months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) oral or written statements or representations made to third parties regarding the relationship of the persons;

(ii) the economic interdependence of the couple or economic dependence of 1 person on the other;

(iii) the persons engaging in conduct and collaborative roles in furtherance of their life together;

(iv) the benefit in the life of either or both of the persons from their relationship;

(v) the community reputation of the persons as a couple; or

(vi) other relevant and material factors.

(2) An alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite or for a finite duration, as may be appropriate. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age. The payor's ability to work beyond the full retirement age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown; provided, however, that in granting deviation, the court shall enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown; provided, however, that in granting an extension, the court shall enter written findings of:

(i) a material change of circumstance that occurred after entry of the alimony judgment; and

(ii) reasons for the extension that are supported by clear and convincing evidence.